

## REMARKS

### Information Disclosure statement

Copies of the missing references are being supplied along with the present reply.

### Objection to Specification

The Examiner objected to the title as not descriptive. The title has been amended.

### 35 U.S.C. 101 Rejections

Claims 1 – 12 stand rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. (Since the Examiner refers to “method claims” it appears the Examiner meant to cite claims 1 – 7.) Claim 1 has been amended to incorporate previously pending claim 2 reciting “executing the tasks,” which would appear to address the Examiner’s rejection since claim 25 has been indicated as directed to statutory subject matter.

Claims 8 – 12 stand rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. Claim 8 has been amended to recite that the data structure is “tangibly embodied on a computer readable medium.”

Claim 13 stands rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. Claim 13 has been amended to recite additional structure to clarify that the system is tangibly embodied in hardware.

Claim 19 stands rejected under 35 U.S.C. 101 as directed to non-statutory subject matter. Applicant points out that claim 19 is expressed as a means for performing specified functions without the recital of structure or material in support thereof, and should therefore be construed to cover the corresponding structure or material described in the specification and equivalents thereof.

### Prior art Rejections

Claims 1 – 3, 5 – 14, 16 – 20, and 22 – 25 stand rejected under 35 U.S.C. 102(a) as anticipated by “Applicant’s Admitted Prior Art (AAPA).” Claims 4, 15, and 21 stand rejected

under 35 U.S.C. 103(a) as unpatentable over AAPA in view of Waddington et al. (U.S. 5,872,981).

*Independent claims 1, 8, 13, and 19*

First, in accordance with MPEP 2129 (I), reproduced below, Applicant is bringing to the Examiner's attention the fact that the portion of Applicant's specification cited as "admitted prior art," is describing Applicant's own work:

A statement by an applicant during prosecution identifying the work of another as "prior art" is an admission that that work is available as prior art against the claims, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102. *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed Cir. 2003). However, even if labeled as "prior art," the work of the same inventive entity may not be considered prior art against the claims unless it falls under one of the statutory categories. *Id.*; see also *Reading & Bates Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 650, 223 USPQ 1168, 1172 (Fed. Cir. 1984) ("[W]here the inventor continues to improve upon his own work product, his foundational work product should not, without a statutory basis, be treated as prior art solely because he admits knowledge of his own work. It is common sense that an inventor, regardless of an admission, has knowledge of his own work.").

Consequently, the examiner must determine whether the subject matter identified as "prior art" is applicant's own work, or the work of another. In the absence of another credible explanation, examiners should treat such subject matter as the work of another.

However, even if the cited portions of the Applicant's specification were considered prior art under one of the statutory classes, each of claims 1, 13, and 19 require "a resource element having a plurality of attachment locations, and linking elements coupling the task elements to the resource element at the plurality of attachment locations," and claim 8 requires "a data structure [that includes] ... data representations of a plurality of attachment locations, and data associating the task elements to the attachment locations."

The Examiner appears to identify the "common data structure" accessed by the tasks described in paragraph [03] lines 3 – 4 as the recited "resource element." However, there is no description that the common data structure "has a plurality of attachment locations" or "[includes] data representations of a plurality of attachment locations." Furthermore, the "links"

described in paragraph [03] lines 6 – 12, identified by the Examiner as the recited “linking elements” do not “couple” or “associate” the tasks to the common data structure.

Thus, the prior art rejections of claims 1, 8, 13, and 19 should be withdrawn for at least these reasons.

*Independent claim 25*

Independent claim 25 requires “linking elements coupling the task elements to the resource element at a plurality of attachment locations, in a time-ordered sequence defining an execution ordering constraint on the tasks associated with the task elements,” which is not disclosed by the description cited as AAPA. The Examiner argues that claim 25 is rejected for the same reasons as claim 1 (Office Action page 6). However, Applicant points out that the subject matter of claim 25 is not identical to claim 1 and is patentable for at least the above reason.

*Dependent claims 4, 15, and 21*

The remaining dependent claims are all properly dependent on a respective one of the independent claims. Since Waddington does teach or suggest the features of the respective independent claims missing in the description cited as AAPA, these claims are allowable therewith. Furthermore, it appears that the Examiner is using improper hindsight based on the rest of the Applicant's specification to provide the motivation to incorporate the teachings of Waddington. If the Examiner has another basis apart from the Applicant's specification for this motivation, the Applicant respectfully requests an explanation of this basis to have an opportunity to respond.

*Remaining dependent claims*

The remaining dependent claims are all properly dependent on a respective one of the independent claims, and are thus allowable therewith. These dependent claims add one or more further limitations not presently relied upon to establish patentability. For that reason, and not

because Applicant agrees with the Examiner, no rebuttal is offered to the Examiner's reasons for rejecting these dependent claims.

New claims 26 – 32

Dependent claims 26 – 32 have been added. Support for the new claims can be found throughout the original specification and drawings including, for example, paragraph [029] and FIG. 2B.

The required amount of \$150 for excess claim fees is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 07470-072001.

Respectfully submitted,

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